



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-944 (Modification Proceeding)]

Certain Network Devices, Related Software and Components Thereof (I); Notice of a Commission Determination Not to Suspend or Modify the Remedial Orders; Termination of the Modification Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to modify or suspend the remedial orders in the above-captioned investigation. The modification proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on January 27, 2015, based on a complaint filed on behalf of Cisco Systems, Inc. ("Cisco") of San Jose, California. 80 *FR* 4314-15 (Jan. 27, 2015). The complaint alleges

violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network devices, related software and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,162,537 (“the ’537 patent”); U.S. Patent No. 8,356,296; U.S. Patent No. 7,290,164 (“the ’164 patent”); U.S. Patent No. 7,340,597; U.S. Patent No. 6,741,592 (“the ’592 patent”); and U.S. Patent No. 7,200,145, and alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The notice of investigation named Arista Networks, Inc. (“Arista”) of Santa Clara, California as the respondent. A Commission investigative attorney (“OUII”) is participating in the investigation.

On June 23, 2016, the Commission found that a Section 337 violation had occurred as to the ’537, ’592, and ’145 patents and therefore issued a limited exclusion order and a cease and desist order against Arista. 81 FR 42375-76 (June 29, 2016).

On August 28, 2018, Cisco filed a petition pursuant to Commission Rule 210.76, 19 C.F.R. 210.76, to suspend the remedial orders issued in this investigation based on a settlement agreement between Cisco and Arista. Specifically, Cisco requested that the Commission suspend the remedial orders subject to Arista’s continued compliance with settlement provisions relating to the removal of certain features from its redesigned products. Neither Arista nor OUII filed a response.

On October 22, 2018, the Commission instituted this modification proceeding and requested briefing from the parties on their positions regarding modification of the existing remedial orders to expressly exempt the Arista redesigned products from the scope of the remedial orders. 83 FR 54137 (October 26, 2018). The parties filed their initial submissions on November 1, 2018. On November 8, 2018, Cisco and Arista filed

responsive submissions.

Having considered Cisco's petition and the briefing from the parties, the Commission has determined not to suspend the remedial orders as requested by Cisco. The Commission has only suspended or temporarily rescinded its orders in very limited circumstances involving adjudication in other tribunals. The Commission has considered the parties' filings and declines to extend the rare circumstances in which it suspends or temporarily rescinds its remedial orders to the circumstances presented in this investigation. For various reasons, the redesigned products are not currently being excluded under the limited exclusion order.

The private parties are not precluded from filing a future petition requesting that the Commission modify its remedial orders including to exempt the redesigned products.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 8, 2019.

Lisa Barton,
Secretary to the Commission.

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